

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 \* \* \*

9 BRIT FANUEL AUGBORNE, III,

Case No. 2:19-cv-01204-KJD-BNW

10 Petitioner,

ORDER

11 v.

12 BRIAN WILLIAMS, et al.,

13 Respondents.  
14

15 On April 28, 2020, this court granted in part respondents' motion to dismiss  
16 certain claims in Brit Fanuel Augborne, III's pro se 28 U.S.C. § 2254 habeas corpus  
17 petition as unexhausted and/or conclusory (ECF No. 15). The court directed petitioner  
18 to either: (1) inform this court in a sworn declaration that he wishes to dismiss this  
19 petition without prejudice in order to return to state court to exhaust his unexhausted  
20 grounds; OR (2) file a motion for a stay and abeyance, asking this court to hold his  
21 federal petition in abeyance while he returns to state court to exhaust his unexhausted  
22 grounds.

23 In response to the court's order, Augborne filed several motions (ECF Nos. 16,  
24 18, 19). He states that he never received the motion to dismiss, and therefore, he never  
25 had an opportunity to respond. He states that he asked the High Desert State Prison  
26 mail room to produce the legal mail receipt to show that the motion to dismiss was  
27 delivered to him, but they could not. He also attaches a signed affidavit in support of this  
28 contention (see ECF No. 18, pp. 9-10). He asks for an opportunity to respond to the

1 motion to dismiss. Respondents oppose, pointing to the certificate of service that  
2 indicates that respondents served the motion via U.S. Mail on Augborne at his address  
3 of record (ECF No. 20). They further argue that while Augborne appears to take the  
4 position that he did in fact exhaust his state-court remedies, the state-court record does  
5 not support that position. *Id.*

6 Out of an abundance of caution, Augborne will have an opportunity to file and  
7 serve a response to the motion to dismiss. The court defers a decision on the pending  
8 motions until it reviews the full briefing on the motion to dismiss.

9 **IT IS THEREFORE ORDERED** that respondents re-serve a copy of the motion to  
10 dismiss and exhibits on petitioner.

11 **IT IS FURTHER ORDERED** that petitioner file his opposition to the motion to  
12 dismiss, if any, within **30 days** of the date of service of the motion to dismiss.

13 **IT IS FURTHER ORDERED** that respondents have **14 days** from the date of  
14 service of the opposition to file a reply in support of their motion to dismiss, if any.

15  
16  
17 DATED: July 27, 2020



---

KENT J. DAWSON  
UNITED STATES DISTRICT JUDGE